



# House of Representatives

## File No. 652

General Assembly

February Session, 2014

**(Reprint of File No. 163)**

Substitute House Bill No. 5439  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
April 21, 2014

### **AN ACT CONCERNING BRAND NAME DRUG PRESCRIPTIONS FOR STATE MEDICAL ASSISTANCE RECIPIENTS.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. Section 17b-274 of the 2014 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective July 1, 2014*):

4 (a) The Division of Criminal Justice shall periodically investigate  
5 pharmacies to ensure that the state is not billed for a brand name drug  
6 product when a less expensive generic substitute drug product is  
7 dispensed to a [Medicaid] medical assistance recipient. The  
8 Commissioner of Social Services shall cooperate and provide  
9 information as requested by such division.

10 (b) A licensed medical practitioner may specify in writing or by a  
11 telephonic or electronic communication that there shall be no  
12 substitution for the specified brand name drug product in any  
13 prescription for a [Medicaid] medical assistance recipient, provided (1)  
14 the practitioner specifies the basis on which the brand name drug

15 product and dosage form is medically necessary in comparison to a  
16 chemically equivalent generic drug product substitution, [and] (2) for  
17 written and telephonic communications, the phrase "brand medically  
18 necessary" shall be in the practitioner's handwriting on the  
19 prescription form or, if the prohibition was communicated by  
20 telephonic communication, in the pharmacist's handwriting on such  
21 form, and shall not be preprinted or stamped or initialed on such form.  
22 If the practitioner specifies by telephonic communication that there  
23 shall be no substitution for the specified brand name drug product in  
24 any prescription for a [Medicaid] medical assistance recipient, written  
25 certification in the practitioner's handwriting bearing the phrase  
26 "brand medically necessary" shall be sent to the dispensing pharmacy  
27 within ten days, and (3) for electronic communications, the prescriber  
28 shall select the code indicating that a substitution is not allowed by the  
29 pharmacy on the certified electronic prescription. A pharmacist shall  
30 dispense a generically equivalent drug product for any drug listed in  
31 accordance with [the Code of Federal Regulations Title 42 Part 447.332]  
32 42 CFR 447.512 for a drug prescribed for a [Medicaid, or state-  
33 administered general] medical assistance recipient unless the [phrase  
34 "brand medically necessary" is ordered] prescribing practitioner has  
35 specified that there shall be no substitution for the specified brand  
36 name drug product in accordance with this subsection and such  
37 pharmacist has received approval to dispense the brand name drug  
38 product in accordance with subsection (c) of this section.

39 (c) The Commissioner of Social Services shall implement a  
40 procedure by which a pharmacist shall obtain approval from an  
41 independent pharmacy consultant acting on behalf of the Department  
42 of Social Services, under an administrative services only contract,  
43 whenever the pharmacist dispenses a brand name drug product to a  
44 [Medicaid] medical assistance recipient and a chemically equivalent  
45 generic drug product substitution is available. The length of  
46 authorization for brand name drugs shall be in accordance with section  
47 17b-491a. In cases where the brand name drug is less costly than the  
48 chemically equivalent generic drug when factoring in manufacturers'

49 rebates, the pharmacist shall dispense the brand name drug. If such  
50 approval is not granted or denied within two hours of receipt by the  
51 commissioner of the request for approval, it shall be deemed granted.  
52 Notwithstanding any provision of this section, a pharmacist shall not  
53 dispense any initial maintenance drug prescription for which there is a  
54 chemically equivalent generic substitution that is for less than fifteen  
55 days without the department's granting of prior authorization,  
56 provided prior authorization shall not otherwise be required for  
57 atypical antipsychotic drugs if the individual is currently taking such  
58 drug at the time the pharmacist receives the prescription. The  
59 pharmacist may appeal a denial of reimbursement to the department  
60 based on the failure of such pharmacist to substitute a generic drug  
61 product in accordance with this section.

62 (d) A licensed medical practitioner shall disclose to the Department  
63 of Social Services or such consultant, upon request, the basis on which  
64 the brand name drug product and dosage form is medically necessary  
65 in comparison to a chemically equivalent generic drug product  
66 substitution. The Commissioner of Social Services shall establish a  
67 procedure by which such a practitioner may appeal a determination  
68 that a chemically equivalent generic drug product substitution is  
69 required for a [Medicaid] medical assistance recipient.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2014	17b-274

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill does not result in a fiscal impact to the Department of Social Services. The bill makes various technical and clarifying changes. In addition, the bill eliminates the requirement that a physician submit a written request for "brand medically necessary" prescriptions if submitted electronically.

House "A" was technical and did not result in a fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

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**OLR Bill Analysis****sHB 5439 (as amended by House "A")\******AN ACT CONCERNING BRAND NAME DRUG PRESCRIPTIONS  
FOR STATE MEDICAL ASSISTANCE RECIPIENTS.*****SUMMARY:**

This bill eliminates a requirement that a medical practitioner submit a hand-written prescription to a pharmacist stating “brand medically necessary” when he or she electronically submits a prescription for a medical assistance recipient specifying that there can be no substitution for the brand-name drug prescribed. The bill instead requires the prescriber to select the code on the certified electronic prescription that indicates a substitution is not allowed.

The bill also broadens the exception to the requirement that a pharmacist dispense a generically equivalent drug for a brand name one to a medical assistance recipient. Under the bill, a pharmacist must dispense the brand name drug when the prescriber specifies that there shall be no substitution for that drug. Currently, pharmacists may dispense such drugs to medical assistance recipients only if the phrase “brand medically necessary” is ordered.

Additionally, the bill changes the law to reflect current Department of Social Services (DSS) practice by replacing references to “Medicaid” recipient with “medical assistance” recipient. DSS administers medical assistance through Medicaid and HUSKY B (the State Children’s Health Insurance Program, or SCHIP), and in practice the laws that apply to Medicaid recipients in Connecticut also apply to those receiving HUSKY B. The term “medical assistance” encompasses all such programs DSS administers.

The bill also makes minor and technical changes.

\*House Amendment "A" makes a technical change.

EFFECTIVE DATE: July 1, 2014

## **BACKGROUND**

### ***Related Bill***

sHB 5262 (File 243), reported favorably by the General Law Committee, (1) removes provisions pertaining to Medicaid prescriptions from the Department of Consumer Protection statutes and (2) makes the same changes as this bill to the procedure all prescribers must follow to order brand name drugs electronically.

## **COMMITTEE ACTION**

Human Services Committee

Joint Favorable

Yea 18      Nay 0      (03/11/2014)